Supreme Court, U.S.
FILED

09-441 OCT 9 - 2009

OFFICE OF THE CLERK

No. _____

In The
United States Supreme Court

_____ ◊ _____

Vincent Michael Ventimiglia, *et al.*,

Petitioners,

vs.

St. Louis, C.O.G., Inc., *d/b/a,*
Twin Rivers Worship Center, et al.,;

Respondents.

On Petition For A Writ Of Certiorari
To The Missouri State Supreme Court
And The Missouri Court Of Appeals
Eastern District

PETITION FOR WRIT OF CERTIORARI

In Propria Personia:

Vincent Michael Ventimiglia,
Debbie Ventimiglia,
N.V., and, J.V., minors,
5817 Runnymede Place
Imperial, Missouri 63052
314-780-2256, 636-287-1487

QUESTIONS PRESENTED

I. Whether the Circuit Court of St. Louis County Missouri, Missouri Court of Appeals Eastern District, and the Missouri State Supreme Court denied the petitioners meaningful access to the Courts, due process, and equal protection of the law, in violation of the 1st, 5th, and 14th Amendments to the U.S. Constitution when these Courts, herein, deliberately, allowed and participated together, against petitioners by misstating facts, misquoting and mischaracterizing the law, and by, recharacterizing petitioner's facts, claims, and allegations, and in so doing, changed the landscape and the theories of petitioner's case in the circuit court and in the appellate court, causing petitioners to be denied a fair and impartial, "*truth finding process*" because of petitioners "*pro se*" status; And the actions of these State Courts, including, the State Court of last resort, in Missouri, in so doing, conflict with other state courts of last resort, and this U.S. Supreme Court, that should be settled by this Court ?

II. Whether the Circuit Court of St. Louis County, Missouri Court of Appeals, Eastern District, and the Missouri Supreme Court ignored, open, and notorious acts of extortion, fraud, oppression in office, misprison of felonies, threats, and intimidation, as well as open and notorious violations of clearly established rules, regulations, policies, statutes, and U.S. Constitutional rights of petitioners, in the denying the Ventimiglia family due process of law, in violation of the 1st, 5th, and 14th Amendments to the United States Constitut-

ion, including, ***when respondents were in open eyed, default, in Division 5, of the 21st Judicial Circuit of St. Louis County***, and was ignored by the Courts, which does absolutely, violate, and conflict with this Court's precedence, as well as other State Courts of last resort, and other Federal Court of Appeals, decisions?

III. Whether the Circuit Court of St. Louis County, Missouri Court of Appeals, Eastern District, and the Missouri Supreme Court, ignored the fact that respondents were allowed to take advantage of the *pro se* status of the Ventimiglia family, where heightened standards of pleadings were *forced* upon petitioners, and where clear, established statues, and rules, were openly allowed to be violated by opposing counsel, and their clients, by these certain judges and attorneys, herein, which resulted in a federal litigation, **(U.S. S.Ct. #09-236, filed Aug. 22, 2009)**, and by respondent's counsel, openly, was allowed to play, " *hot and cold, and, fast and loose,"* between the federal and state proceedings, thereby subjecting petitioners to denial of due process and equal protection of the law; And, in so doing, did these actions of respondents, violate petitioner's 1st, 5th, and 14th Amendments to the U.S. Constitution, which is in complete conflict with other state courts of last resort, and, other federal court of appeals, and forbidden by this U.S. Supreme Court, precedence, shown herein, governing these conditions forced upon petitioners?

IV. Whether the Missouri Court of Appeals specific findings in their opinion, *not published*, stated, in so many words, that; " pro se litigants stand in the same shoes as an attorney and are to be judged as such, in his, or her, pleading, and defenses," and then judging

petitioner's pleadings, using those, and worse, standards, with complete disregard to clear established law, set by this Court, and, deny petitioners of their 1st, 5th, and 14th Amendments to the U.S. Constitution?

LIST OF PARTIES

1. **Vincent Michael Ventimiglia,**
Debbie Ventimiglia,
N.V., *and*, **J.V.**, *Minors, by*
Vincent Michael Ventimiglia,
Petitioners,

St. Louis, C.O.G., Inc., *d/b/a,*
Twin Rivers Worship Center;
T. Bryan Cutshall, *Incorporator, pastor, and C.E.O., of T.R.W.C.;*
Terry Jones, *Registered Agent, and Attorney of T.R.W.C.;*
Norman McFall, *Business agent, T.R.W.C.;*
Aaron Buck, *Video Specialist of T.R.W.C.;*
Respondents.

Attorneys for respondent parties;

Russell Watters, Jennine Adamek Moore, Kenneth Goleaner,
1010 Market St.
20th floor
St. Louis, MO. 63102;

Daniel G. Tobben, Kevin Behrndt,
7701 Forsyth
Suite 200
Clayton, MO. 63105.

Clerk of Missouri Court of Appeals, E.D.
815 Olive St.
St. Louis, MO. 63101

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I. Because, the Circuit Court of St. Louis County, Missouri, Missouri Court of Appeals, Eastern District, and the Missouri Supreme Court denied the petitioners meaningful access to the courts, due process, and equal protection of the law, in violation of the 1st, 5th, and 14th Amendments to the United States Constitut-

ion, when those courts misstated the appellate review, facts, misquoted, and mischaracterized the law, and denied petitioners a fair, and impartial truth finding process in their "*pro se*" status.....16-27

II. The Circuit Court of St. Louis, County, Missouri Court of Appeals, Eastern District, and the Missouri Supreme Court did, ignore the open acts of extortion, fraud, oppression in office, misprison of felonies, threats, and intimidation, as well as open and notorious violations of well established rules, regulations, policies, statutes, and Constitutional rights of the petitioners, when these courts, denied the Ventimiglia family due process of the law in violation of the 1st, 5th, and 14th Amendments to the United States Constitution.....27-30

III. The Circuit Court of St. Louis County, Missouri Court of Appeals, Eastern District, and the Missouri Supreme Court ignored the fact, that respondents were allowed to take advantage of the pro se status of the Ventimiglia family, where heightened standards of pleading were allowed and where clearly established statutes, rules were allowed to be violated, seemingly, as a reprisal, for a pending federal litigation against the state actors, *or it is common practice, against pro se litigants.* See; *Writ for Certiorari,* #09-236, pending.

Respondent's counsel, was allowed to play *fast and loose, and, hot and cold,* between the state, and federal proceedings, someone has to help the Ventimiglia family, and the Ventimiglia family is relying on this Court to settle these issues. Thereby, these respondents actions, herein, denied petitioners of their due

process, and equal protection of the law, in violation of the 1st, 5th, and 14th Amendments to the United States Constitution.....30-31

IV. The Missouri Court of Appeals specific findings that pro se litigants stand in the same shoes as an attorney, and is to be judged as such in his/her pleadings and defenses, and judged the petitioner's pleadings using those standards. This shows conclusively, by the Mo. Appellate Court's own words, and actions, violated petitioner's rights to due process, equal protection of the law, and meaningful access to the courts in violation of the 1st, 5th, and 14th Amendments to the United States Constitution, holding petitioner's to heightened standards..... 31-35

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PETITION FOR WRIT OF CERTIORARI TO THE MISSOURI SUPREME COURT

Opinions Below

The order o the Missouri Supreme Court, denying transfer from the Missouri Court of Appeals, Eastern District was issued without opinion on, June 30, 2009, (Appendix #1); The Order of the Missouri

Court of Appeals, Eastern District, denying petitioner's Motion for Rehearing, Rehearing En Banc, and/or Transfer to the Supreme Court was issued on, May 7, 2009, (Appendix #2); The Opinion and Memorandum of the Missouri Court of Appeals was issued, March 24, 2009,(Appendix #3).

Jurisdiction

The orders issued by the Missouri Court of Appeals, Eastern District, (Appendices #2,#3), and the Missouri Supreme Court, (Appendix #1), are final opinions of the state courts. The U.S. Supreme court has jurisdiction pursuant 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution; Bill of Rights;
Amendment I
Congress shall make no law ... prohibiting the free exercise there-of, or abridging the freedom of speech,..., and to petition the government for a redress of grievances.

Amendment V
No person shall be held to ...nor *be deprived of life, liberty, or property, without due process of law;*

Amendment XIV
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. *No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

REVISED STATUTES OF MISSOURI

Time of pleading
R.S.Mo. 509.260. 1. *A defendant shall file his answer within thirty days after the service of the summons and petition upon* ...3. *The filing of any motion provided for in sections 509.290 to 509.320 alters the time fixed for filing any required responsive pleadings as follows, ... If the court denies the motion ... the responsive pleading may be filed within ten days after notice of the court's action; ... In either case the time for filing of the responsive pleading shall be no less than remains of the time which would have been allowed under this section if the motion had not been made.*

Amendment of pleadings
R.S.Mo. 509.490. *A party may amend his pleading as a matter of course at any time before a responsive pleading is filed and served, ... A party shall plead in*

response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Amendments to conform to evidence.
R.S.Mo. 509.500. ... *the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.*

MISSOURI SUPREME COURT RULES

MERITORIOUS CLAIMS AND CONTENTIONS
RULE 4-3.1:
A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.

CANDOR TOWARD THE TRIBUNAL
RULE 4-3.3(a)(1):
(a) A lawyer shall not knowingly:
(1) *make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;*

FAIRNESS TO OPPOSING PARTY AND COUNSEL RULE 4-3.4:

A lawyer shall not:

(a) *unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;*

(b) *falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;*

(c) *knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;*

(d) *in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;*

(e) *in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or*

AMENDED AND SUPPLEMENTAL PLEADINGS R.S.Mo. 55.33.

(a) *A pleading may be amended once as a matter of*

course at any time before a responsive pleading is served or... the pleading may be amended only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

STATEMENT OF THE CASE

Vincent, and Debbie Ventimiglia, with their two minor children, Nick, (16), and, Joe Ventimiglia, (14), were parties to a civil action filed in St. Louis County, Missouri, (08SL-C00790), and the Missouri Court of Appeals for the Eastern District, ED91597, And the Missouri Supreme Court, SC90165. There are substantial records and documentation showing the Ventimiglia family has a legitimate reason to be before the United States Supreme Court. (Appendices #1-#26, Which are incorporated and restated herein).

During the time the state action was being litigated, a parallel federal action was filed by the Ventimiglia family, and was also pending. SEE:

A: *Ventimiglia et al., vs. St. Louis C.O.G.Inc., d/b/a Twin Rivers Worship Center, et al.,* 2009 U.S. District Lexis 96 (EDMo. 2009);

B: *Ventimiglia vs. St. Louis, C.O.G., Inc., d/b/a Twin Rivers Worship Center, et al.*, 2009 U.S. District Lexis 99591 (EDMo. 2009). (Appendix #4, page #10);

All during the state and federal litigation, the respondents were playing two ends, against the middle, taking one position in the federal court, and inconsistent positions in the state court. (Appendix #9, p.p. 9-10) Committing fraud, and, actually, lying to each court, in violation of ethics, and professional conduct, and disgracing the courts, in accordance to this Court, and other federal court of appeals precedence. Judge Perry would not address these issues, as they were raised by petitioners. U.S.S.Ct. #09-236.

The Ventimiglia family filed a civil action in the circuit court of St. Louis County, Missouri for:

(1) Malicious Prosecution;
(2) Negligent Infliction of Emotional Distress; and,
(3) Declaratory Judgment, along with other causes of actions, of obstructing access to the Missouri Courts. (Appendix #4, page #5).

The Ventimiglia family followed the following state procedure; (1) The original suit was filed, and timely served; (2) The defendants filed motions to dismiss; (Appendix #4, p.p. #5-#7).

The defendants being sued were listed as St. Louis, C.O.G.,Inc., d/b/a, Twin Rivers Worship Center, T. Bryan Cutshall, Norman McFall, Terry Jones, and Aaron Buck. The respondents hired counsel, entered their appearance, on April 16, 2008, and filed various motions to dismiss. (Appendix #4, p.p. #5-#6). The petitioners filed a timely filed, amended complaint, by leave of the court, and executed a certificate of service when the amended complaint was filed. (Appendix #4, p.p. #5-#6). There was a case management conference scheduled for 4/22/2008.

Also on 4/22/2008, St. Louis C.O.G., Inc., filed a responsive pleading, with a noticed hearing for

5/2/2008. Also was filed on; 04/22/2008 Docket Entry: Motion to Dismiss Filing Party: JONES , TERRY L Docket entry: Motion to Dismiss Text: or Strike Claims for Punitive Damages. Filing Party: JONES , TERRY L Docket Entry: Motion Filed Text: Alternative Motion for More Definite and Certain Statement and Motion to Strike Scandalous Statements. Filing Party: JONES , TERRY L Docket Entry: Motion to Dismiss Text: the Plaintiffs' Petition, and Motion to Cite Vincent Ventimiglia for the Unauthorized Practice of Law. Filing Party: JONES , TERRY L; *Id.* Docket.
Terry Jones, ALSO, filed for hearing day on 52/2008; *Id.*

And on, 4/24/2008 Also, petitioners filed on 04/28/2008 Docket Entry: Supplemental Filing Text: to Response to Defendants' Motions to Dismiss, filed by Plaintiffs; *Id.*

On, 04/28/2008 Docket Entry: Notice of Hearing Filed Text: for 05/02/2008, at 10:00 am. Docket Entry: Motion Filed Text: in Response to Defendant Terry Jones' Motion to Dismiss, and Companion Motions, filed by Plaintiffs. Docket Entry: Notice of Hearing Filed Text: for 05/02/2008, at 10:00 am. Docket Entry: Motion Filed Text: Request by Nick Ventimiglia, A Minor, Fourteen Years Old, for Vincent Ventimiglia to be appointed "Next Friend" Filing Party: VENTIMIGLIA , VINCENT Docket Entry: Motion Filed Text: **for Evidentiary Hearing, and Request for Defendants to Show Cause Why Motions to Dismiss Should Not be Dismissed. Filing Party: VENTIMIGLIA , VINCENT** Docket Entry: Consent to Appt Next Friend Text: Request of Vincent

Ventimiglia to be appointed Next Friend to Joseph Ventimiglia, a Minor, 12 Years Old. *Id. Docket*

On, 04/28/2008 Docket Entry: Memorandum Filed Text: of Law in Support of his Motion to Dismiss Plaintiffs' Petition. Filing Party: JONES , TERRY L Docket Entry: Memorandum Filed Text: of Law in Support of his Motion to Dismiss the Petition of Debbie Ventimiglia, Nick Ventimiglia, a Minor and Joseph Ventimiglia, a Minor. Filing Party: VENTIMIGLIA , VINCENT Docket Entry: Motion to Dismiss Text: Plaintiffs' Petition, or in the alternative, Motion for a More Definite Statement. Filing Party: ST. LOUIS C.O.G. INC Docket Entry: Notice of Hearing Filed Text: - Amended - for 05/02/2008, at 10:00 am. Docket Entry: Memorandum Filed Text: in Support of Defendant St Louis C O G Inc's Motion to Dismiss, or in the alternative, Motion for a More Definite Statement. Filing Party: ST LOUIS C.O.G. INC 04/30/2008 Docket Entry: **Order Appt Next of Friend Text: Vincent Ventimiglia appointed Next Friend of Nick Ventimiglia SO ORDERED: JUDGE JAMISON** *Id. docket*

On, 04/30/2008 Docket Entry: Order Appt Next of Friend Text: Vincent Ventimiglia appointed next friend to Joseph Ventimiglia SO ORDERED: JUDGE JAMISON Docket Entry: Filing: Text: Plaintiffs' Request of Court to Make Amendment by Interlineation According MRCP filed. SO ORDERED: JUDGE JAMISON 05/01/2008 Docket Entry: Notice of Hearing Filed Text: Amended Docket Entry: Response Filed Text: to memorandum of law in support of motion to dismiss 05/02/2008 Docket Entry: Motion Filed Text: IN OPPOSITION TO

HEARING Docket Entry: Order *Id. docket*

On,05/02/2008 Docket Entry: Notice of Hearing Filed Text: AMENDED Docket Entry: Memorandum Filed Text: PROPOSED ORDERS FILED 05/05/2008 Docket Entry: Memorandum Filed Text: **PROPOSED ORDERS** Docket Entry: Motion for Change of Judge Docket Entry: Memorandum Filed Text: PROPOSED ORDER Docket Entry: Motion to Strike. *Id. docket*

On,05/05/2008 Docket Entry: Notice of Hearing Filed Text: AMENDED 05/07/2008 Docket Entry: Notice of Hearing Filed Text: AMENDED 05/09/2008 Docket Entry: Response Filed Text: to Defendant - St Louis C.O.G. Inc's Motion to Dismiss Plaintiff's Petition, or in the alternative, Motion for a More Definite Statement. Filing Party: VENTIMIGLIA , VINCENT Docket Entry: **Order Text: GRANTING LEAVE TO FILE AMENDED PETITION APPROVED** Docket Entry: **Amended Motion/Petition Filed on 5/9/2008.** On, 05/12/2008 Docket Entry: Notice of Hearing Filed Text: AMENDED; *Id. docket*
On, 06/02/2008 [1]Docket Entry: Notice of Hearing Filed 06/04/2008 Docket Entry: Notice of Hearing Filed 06/10/2008 Docket Entry: Motion Hearing

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[1] On 7/10/2008 there was a Motion hearing day noticed in accordance to Rule 75.01, Motion for rehearing, etc. (See transcript of hearing. Appendix #14, and, #17, judgment). The attorneys and the judge, in closed chambers, after the original hearing, and changed the wording of the order/judgment to deny procedural due process, to petitioners. When petitioners never had a chance to defend their claims. This is an example of the treatment shown to pro se petitioners. And it is NOT SUA SPONTE DISMISSAL.
This is a conspiracy, clearly, to deny petitioner's due process.

Scheduled Associated Events: 06/11/2008 , 09:00:00 - Motion Hearing Docket Entry: Notice of Hearing Filed Text: AMENDED 06/11/2008 Docket Entry: Motion Hearing Held Text: **MOTION TO AMEND PETITION CALLED HEARD AND DENIED. MOTIONS TO DISMISS CALLED HEARD AND GRANTED** Docket Entry: **Dismiss by Ct w/ Prejudice** *Id. Docket*

There was a hearing in judge Jamison's court on 5/2/2008 and the judge ordered proposed orders from the parties. Let it be noted that judge Jamison granted petitioner's first amended complaint status, and petitioners filed first amended complaint by interlination. This granting of their first amended complaint, mooted pending motions to dismiss, and April 30, 2008, before the case was sent to judge Kintz's court room. Also, Judge Jamison granted petitioner's consent of next of friend to the minors. If judge Jamison did not sua sponte dismiss petitioner's case, but rather found merit to grant first amended complaint and next of friend, how can the Court of Appeals make up such a story for judge Kintz, saying he [2]sua sponte dismissed petitioners claims?

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[2] Mr. Kennth Goleaner, Brown and James P.C., did in fact, invent the sua sponte dismissal, at the time of the oral arguments with the Mo. Ct. of Appeals. Mr. Goleaner outright lied, knowing that the judgment and the docket, including the transcript of the hearing, evidences there was arguments, in the court room, and the documents clearly state, "**Motions to dismiss, heard and granted.**" Respondents are guilty of default, and outrageous, misconduct, See Appendices, #7, #14, #17. And if the Mo. Ct. of Appeals was going to show courtesy to petitioners, as it stated in it's opinion, Appendix #4,p.6, it should have read petitioner's file, and ruled favorably for them, but chose to advocate for the respondents and their attorneys, and recharacterized petitioner's facts, the docket fact, the judgment/order facts, and denied relief, wherein relief was proper.

Long after the respondents were out of time to file an amended answer, as mandated by Missouri Supreme Court Rules, and Statutes, the respondents did not timely respond, even up until June 11, 2009, in the first hearing in Judge Kintz's Court. It was over thirty days, and there were NO RESPONSIVE PLEADINGS FILED BY RESPONDENTS. (Appendix #4, p.p. #5-#6).

Instead of following mandatory state procedures, the circuit court revived the respondent's original motions to dismiss, and dismissed petitioner's amended complaint, with no challenge to the amended petition. **Respondents were in default before they hit the court on June 11, 2008.** (Appendix #4, p.p. #4-#7).

Missouri Rules of Civil Procedure, and state statutes, clearly forbid the state judge from reviving a motion to dismiss, ***by breathing life into a dead instrument, and brought it forward, and mischaracterized it,*** which, by law had been held, to be ***moot,*** for failure to prosecute.(Appendix #4, p.p.#5-#7).

Initially, the Ventimiglia family had a legitimate cause of actions. (Appendices #5, p.#7, & #13):

A. Respondents egregiously attacked Mr. Ventimiglia, ***and his minor children*** in the middle of a church service because the pastor could not control himself, and went totally out of control;

B. Respondents caused a bogus restraining order to be filed against Mr. Ventimiglia to try to keep him away from the attackers, and witnesses, which was found to be filed with false evidence, and perjury, including, fraudulent behavior, of respondents, and their attorney, Terry Jones.

C. Petitioner, Mr. Ventimiglia, tried reasonably,

to confer with atty. Jones, and respondents, Norman McFall, and T. Bryan Cutshall about the crimes they were committing against the state and federal gover· nment, in trying to resolve the issue. But, instead, the battle continued in the circuit court, Div. 18, until just before the trial date, and after two discoveries, in where the defendants clearly showed they had no evidence, and after petitioner, Mr. Ventimiglia hired an expert video consultant to prove that a DVD of the actual event was manufactured, and edited, and entered it as evidence into the court, by defendants. With clearly shows more crimes of these defendants in their illegal pursuit to prosecute Mr. Ventimiglia, and then, after, a failed attempt at summary judgment, and two discovery attempts by plaintiffs, and an expert witness, under oath, declared the evidence of defendants, was manufactured and edited.

The defendants were forced to abandon their case against Mr. Ventimiglia, and defendants did file a motion to dismiss their own case, but are now trying to maintain, they were victorious, which is a blatant, and continuous lie before the courts. And the courts refuse to here these issues, or rule on this issue, as well as other vital issues that support petitioner's claims.

Judge Bresnahan, did in fact, after petitioners requested a declaratory judgment, and clarification of Judge Bresnahan's order, dismissing the case, went on to declare, " Mr. Ventimiglia's prevailing status, and stated, " He, judge Bresnahan ruled in " favor," of Mr. Ventimiglia, by awarding him money in the amount of $180. 00, for subpoenas served, and gave Mr. Ventimiglia the bond money of defendants, $100.00, and Judge Brenahan clearly stated, he ruled, " against," the defendants, and granted partial

declaratory judgment in favor of Mr. Ventimiglia, and recommended to Mr. Ventimiglia, malicious prosecution remedies. (Appendix #17)

Therefore, according to the law, Mr. Ventimiglia, prevailed against the illegal, malicious prosecution of defendants, and was attempting to receive redress and meaningful access to the Missouri Circuit Courts for meaningful grievance, but was taken on a ride by these respondents, herein, to do just the opposite, and in so doing denied petitioners due process and equal protection of the law, and denied them meaningful access to the State Courts; including the Missouri Court of Appeals, and the Missouri Supreme Court, saw this record and ignored it. (Appendix #4,p.#7, with App. #7, #8, #9, #10, #11, #13,).

The Circuit Court dismissed the law suit filed by petitioners, the Ventimiglia family, (Appendix #3, p.p.#5-#7). The dismissal was based upon the trial judge reviving mooted motions to dismiss, mooted out by a timely, noticed, and certified, served, amended complaint.(Appendix #17) Respondents never responded to the, well pleaded, Amended petition, properly, or timely. As a matter of fact, the amended petition was granted in two courts, with no proper, or timely, response from "open eyed," respondents. This was properly, and timely brought before the court and notification was made to respondents, but the respondent attorneys continued to try to confuse the record and make false, frivolous arguments to support their default positions, but the record is so clear, and preserved for this Court's review. (Appendix #3, p.p. #2-#3, App. #5, #7, #8, #9, #10,#14, #15, #16-#26).

Great mistakes, and grave misrepresentations, were committed by the Missouri Court of Appeals, wherein, that court blatantly ruled that petitioners filed

for a change of judge, and on May 9, 2008, *without notice to the parties*, presented a motion for leave to file an amended complaint, which was granted, and filed in the court.(Appendix #2, '#3,p.#3,' &, #5, #7).

This is a serious error of the Ct. of Appeals, E.D.Mo., as the Motion for Leave to file the amended complaint had a certificate of service, clearly, and absolutely, showed defendants were duly, and timely served, with these documents. (Appendix #5,p. p. #2-#3). Terry Jones did try to sneak a Motion to Dismiss plaintiff's first amended complaint in on June 11, 2008, but was responded to by petitioners for the untimely manor it was presented, on the day of the hearing. NOTWITHSTANDING, respondents were already in default, before 6/11/2008.

The Missouri Court of Appeals, ED, also opinioned that the circuit court " *sua sponte*, " dismissed the case for failing to state a claim upon which relief can be granted. THIS IS INTENTIONALLY, FALSE! The Mo. Court of Appeals, ED, has created a smoke screen to try to cover for the respondents, default. (Appendix #3, p.p. #1-#3, #5-#6, and, Appendices, #7, #11, #14, #17).

This was totally wrong as a reading of the judges dismissal, and the docket above, show, beyond any doubt, that the judge was not acting on his own, but was acting on the mooted motions to dismiss, and the wrong arguments of the defense attorneys, filed, and argued, by the respondent's, attorneys, instead of taking petitioner's facts as true, as they were outlined in their pleadings. (Appendix #4, #5, #13). See the docket entries, above, clearly showing that judge JAMISON heard the some of the arguments and ordered for pro-

posed orders to be made by all parties. Proposed orders were prepared and filed on May 5, 2008, and the proposed orders were supposed to be transferred to judge Kintz for his reviw, after judge Jamison disqualified himself. But judge Kintz got furious with petitioners and dismissed their case in an egregious manor, as the record supports, after a one sided hearing, and misconduct of the attorneys. There was NO SUA SPONTE DISMISSAL, as the Mo. Court of Appeals tries to build a prejudice foundation for petitioners, in order to derail their case, by making up the sua sponte dismissal, and cover for the state actors. The Court orders and the docket show; **06/11/2008** Docket Entry: Motion Hearing Held Text: MOTION TO AMEND PETITION CALLED HEARD AND DENIED. **MOTIONS TO DISMISS CALLED HEARD AND GRANTED** Docket Entry: Dismiss by Ct w/ Prejudice. *Id. With appendix #17.*

During the circuit court and appellate court, proceedings, respondents engaged in a collection of egregious wrong doings. (Appendices #3, #5, #6, #7, #8, #9, #10).(petitioners do at this time incorporate and restate all of the Appendices, herein, this petition, to this petition).

These wrongs identified, herein, were open and notorious, including, and all the way from harassing the petitioners in the circuit court, to strong arm tactics being used against them. (Appendices, #3, #8, #9, #10). Petitioners classified it as " *fraud on the court, and on the Ventimiglia family.*"(Appendices #8, #9, #10).

Petitioners requested a Master to be appointed under Mo.S.Ct. Rule 68.03, to hear the charge of fraud against the court, and against the Ventimiglia family. (Appendix #8, p.p. #9-#15); *(Extensive documented reasons; bad faith, fraud, and conspiracy).*

There were critical issues of fact in the legal files, filed in the Mo. Ct. of Appeals, ED, critical to the issues in this case which have been ignored by the Appellate Court and Supreme Court of Mo. (LEGAL FILE, 72-76, 78-90, 135-158, 164-166, 173-180, 186-189, 190-193, 196-198).

All of petitioner's important facts, including the host of Missouri cases used by petitioners in the battle against the attorneys, judges, and state of Missouri, demand and, clearly forbid, a biased, and prejudiced judge to preside over a Missouri case.

Fact and law in petitioner's pleadings, show and make clear reference to numerous judges who, for want of better words, use their oath of office to obstruct justice, as was done in petitioner's case in the State of Missouri, court system; *Hastings vs. U.S. Senate, Impeachment Trial Committee,* (*Hastings*, 837 F.Supp. 3; 802 F.Supp. 490). *Nixon vs. U.S.*, 938 F.2d 239 (DC1991); *U.S vs. Committee on Impeachment*, 469 F.2d 1135 (CA2); *U.S. vs. Claiborne*, 727 F.2d 842 (CA9); Nixon vs. U.S 113 S.Ct. 732; *Larson vs. Senate of Commonwealth,* 152 F.3d 240 (CA3); *Mainly; U.S. vs. Manton*, 107 F.2d 1834 (CA 2, 1938); *In re Kohn* , 568 S.W. 2d 255 (Mo); *In Re Ellison* 789 S.W.2d 469 (Mo); *Moran vs. Clark*, 304 F.3d 516 (CA-8); and with, *Reserve Mining vs. Lord*, 529 F.2d 181 (CA8).

REASONS FOR GRANTING THE WRIT

I. Because, the circuit court of St. Louis County, Missouri, Missouri Court of Appeals, Eastern District, and the Missouri Supreme Court denied the petitioners meaningful access to the courts, due process, and equal protection of the law, in violation of the 1st, 5th,

and 14th Amendments to the United States Constitution, when those courts misstated the facts, misquoted, and mischaracterized the law, and denied petitioners a fair, and impartial truth finding process in their " *pro se* " status. Petitioners do restate and incorporate into this, "I., II, III, and, IV., below.

Petitioners restate the " Statement of the Case," herein, into this section, showing all of the underhanded tricks used by the respondents. (Appendices #3-#15) As we examine, the Mo. Ct. of Appeals, opinion, we can clearly see that the Court was wrong in the facts it used in crucial issues, *especially,* when the Court ruled that petitioners did not notice the 1st Amended Complaint upon respondents.

If the Court of Appeals ruled properly, " that respondents were indeed, noticed, and Mr. Tobben did file a untimely response, after the parties were notified of their default by Mr. Ventimiglia. Immediately, Mr. Ventimiglia filed a motion to strike Mr. Tobben's Motion, ***which was never ruled upon***, as it was very untimely, rendering it moot, and in default, as well as their original motions to dismiss, were moot. (Appendix #3,p.p.#2, #3, and, Appendices #7-#-10). If the Ct. of Appeals ruled properly in this issue, it would have to hold the respondents in default, and rule, " ***petitioners won on the merits.***" See: *Moore Enters., Inc. v. Franklin Newspapers,Inc* ., 716 S.W. 2d 907, 908 (Mo. App. 1986). This Court needs to settle this issue.

The Mo. Ct. of Appeals, ED, used a standard, using, *In re Marriage of Garrison,* 158 S.W. 3d 336, 337, (Mo.App.S.D. 2005), " pro se litigants must satisfy all of the relevant rules or procedure and this court cannot hold a pro se litigant to a lower standard of performance than the litigant who is represented

by an Counsel." *but left out the rest of the ruling on the same paragraph*, " We recognize that Appellant is appealing as a pro se litigant, however, pro se litigants are still bound by the same rules of procedure as attorneys. *'While this court recognizes the problems faced by pro se litigants, we cannot relax our standards for non lawyers.' This refusal to relax the standards for an appeal for pro se litigants is not due to a lack of sympathy, but rather 'it is necessitated by the requirements of judicial impartiality, judicial economy and fairness to all parties.'* See: *Haines, supra.*

BUT, the Mo. Ct. of Appeals, openly allows the respondent attorneys to break rules, commit open fraud, and play, *fast and loose and hot and cold*, as this record clearly shows. Nothing these lower courts have done, show any type of fairness to petitioners.

The Mo. Court of Appeals, ED has shown highly prejudiced behavior against petitioners, herein. Please see exhibit #13, petitioner's first amended complaint, which shows all of the requirements necessary for the case to go forward in the circuit court, that the Mo. Ct. of Appeals misstated in their opinion to deny appellants any relief and advocate for the attorneys of the respondents. See Exhibit #3, p.p. #2-#13, and compare it to Exhibit #13, p.p. #2-#25, , with complete claims, facts, and allegations, supported by laws.

As this Honorable Court can clearly see, by examining this part of petitioner's First Amended Complaint, there are all the pleadings required for the elements of petitioner's claims, and the Mo.Ct.of Appeals deliberately used false facts in order to deny petitioner's relief, saying these elements were not met, which is a total misrepresentation, and in so doing, is denying petitioner's due process and equal protection of the laws, and meaningful access to the

Mo. Court system.

If the Ct. of Appeals ED, did hold to it's own rendering, in it's opinion, of the standard properly executed, " We will reverse the trial court's dismissal of a plaintiff's action for failure to state a claim, if after reviewing the pleading in it's broadest Intendment, the allegations invoke principles of substantive law which may entitle a plaintiff to relief. *Boyer vs. City of Potosi*, 38 S.W.3d 430, 435 (Mo.App. E.D. 2000).

Please pay special attention to Exhibits #4, and #5, wherein petitioners, in their Motion for Rehearing, and Application to the Missouri Supreme Court, have very carefully, and completely outlined the discrepancies this Mo. Ct. of Appeals committed in order to deny petitioner's due process and equal protection of the laws. Petitioners do incorporate, and restates, those complete arguments into this Writ for Certiorari.

Also, the Ct. of Appeals, ED, was wrong when it ruled that the circuit judge, sua sponte, dismissed the amended complaint, of petitioners, instead of what really happened, and that is, that, the circuit judge, and the defense attorneys, together, even in closed chambers, while the petitioners were being held under guard in the courtroom, did in fact, after the rehearing of July 10, 2009, falsify the order on the court memo, and ex parte'd petitioners from the closed chambers, as the attorneys wrote more into the orders than judge Kintz said in the courtroom, together with judge Kintz, and lied about petitioners arguing their case, and the issues in the court, by stating that petitioners did argue all motions, *but, there were none argued*, as the transcript shows the attorney's, written orders are false. Petitioners, did notice numerous pleadings for that hearing, and was denied proper

procedural process. See; Appendices #14, #17 which is the transcript of the hearing of July 10, 2008, and the orders made by the attorneys in the judge's chambers, with the judge, excluding petitioners. Then, back in the court room, petitioners refused to sign them, as a notice to this Court, in the accruing time, that petitioners were objecting to the treatment they were receiving from respondents, in the circuit court of St. Louis, County.

This Court can clearly see, that the trial court was not sua sponte, dismissing petitioner's case, but rather the record holds, dearly, to the facts, that the court and the attorneys were working together, therefore, sua sponte, is inserted by the Mo. Ct. of Appeals, erroneously, and petitioners believe, it was done to advocate for the judge and the attorneys, who are in a heap of trouble, and petitioners are relying on this court for due process, equal protection of the law, and justice, and equity, in the law. (Appendix #3, p.p. #5-#6). All of the judge's actions, words, or writings, do not state that he was sua sponte, dismissing petitioner's claims. See; docket; **06/11/2008** Docket Entry: Motion Hearing Held Text: MOTION TO AMEND PETITION CALLED HEARD AND DENIED. MOTIONS TO DISMISS CALLED HEARD AND GRANTED Docket Entry: Dismiss by Ct w/ Prejudice. *Id. docket*

Even in the bogus orders written by the attorneys, with the judge in the judge's chambers, without petitioners, did not mention sua sponte, but rather showed that the judge was working with the attorneys and their motions to dismiss, that were mooted by the first amended complaint of petitioners. (Appendix #4, p.p. #2-#7)

It is noted, when an amended complaint is filed, a party cannot rely on a prior motion to dismiss,

Missouri Supreme Court Rule 55.33(a),et seq, R.S.Mo. 509.260, 509.490, 509.500; Filing an amended complaint demands, an amended motion to dismiss, to be filed, *timely, with proper, notice, which was not done, by respondents.* See; *Wright vs. Mo. Dept. of Corrections*, 48 S.W. 3d 662 (Mo.App. W.D.), *appeal after remand*, 87 S.W.3d 396 (Mo.App.W.D.2002); *Pure Country vs. Sigma Chi Fraternity*, 12 F.3d 952, 956 (CA8 2002); *Hempill vs. Roy, 2008 U.S. District,* Lexis 758 @ [#2] @13 (EDMo. 2008). Appen.#13,#17-#26.

By carefully examining the opinion of the Mo. Ct. of Appeals, ED, one can only summarize that the Mo. Ct. of Appeals, ED, made serious factual errors that grossly affected it's ability to faithfully discharge it's duty, under the law, when it absolutely, recharacterized, petitioner's appeal, " out of courtesy," only to prejudice petitioners, and dismiss their valid claims, and appeal, violating this Court's precedence, and the Mo. Supreme court ignored this, See; Appendix #4;

"The practice of judicial recharacterization of pro se litigants' motions is a mutation of the principle that the allegations of a pro se litigant's complaint are to be held "*to less stringent standards than formal pleadings drafted by lawyers.*" *Haines v. Kerner*, 404 U. S. 519, 520 (1972) (per curiam). "Liberal construction" of pro se pleadings is merely an embellishment of the notice-pleading standard set forth in the Federal Rules of Civil Procedure, and thus is consistent with the general principle of American jurisprudence that "the party who brings a suit is master to decide what law he will rely upon." *The Fair v. Kohler Die & Specialty Co.*, 228 U. S. 22, 25 (1913). Our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling

them to relief. *Castro, supra.*

At no time did the circuit court even suggest it was acting sua sponte, and, without a doubt, the Ct. of Appeals allowed fraud to be used in this case when, in fact, the Court of Appeals, ED, changed the landscape of petitioner's claims, and facts of the case, so that it could affirm the erroneous dismissal of this case from the circuit court, 21st judicial circuit, div. 5, Judge Kintz, by using sua sponte dismissal, and that petitioners failed to notice properly the first amended complaint, with other mischaracterizations of petitioners case, to prejudice them and dismiss their case. (See: Appendices # 3, #5, thru, #26). Petitioners find that the Ct. of Appeals, [3]recasting of their law suit, and appeal, so it could be denied, is illegal, and contrary to U.S. Supreme Court, established laws, and precedence. S.W.2d 284 (Mo); *State vs. Bankhead,*

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[3] Petitioners NEVER agreed to anything, Opinion, App.#3, p.9, with respondents, for them to withdraw their case, but rather diligently pursued a jury trial to prove Mr. Ventimiglia's innocence. App.#23,#24. Petitioners need this Court to settle these issues, since the Mo. Supreme Court refused petitioner's Application for Transfer, to correct the Mo.Ct. of Appeal's errors, as outlined herein, this Writ for Certiorari. See; *Castro vs. U.S.*, 124 S.Ct. 786 (20-03). Dismissing the case in this, herein, posture was clear error in accordance to, *Wright vs. Missouri, Dept. of Correction,* 48 S.W.3d 662 (Mo.App.), *Appeal after Remand,* 87 S.W.3d 396 (Mo.App. W.D. 2002). See, Appendices, #5-#26. There is something fundamentally wrong, and unfair, when the truth, facts, laws, rules, and theories of a case are altered by the opposition, and the judges, to obtain a fraudulently begotten judgment. See; *Hazel Atlas Glass Co. vs. Hartford Empire Co.*, 322 u.s. 338, 64 S.Ct. 997 (1944); *Sutter vs. Easterly,* 189 S.W.2d 1284(Mo.)

182 S.W. 3d 253 (Mo.App.ED); *Smith vs. Groose,* 205 F.3d 1045 (CA8).

The Mo. Ct. of Appeals on page #4, and #5, of it's opinion, used, *Manzer vs. Sanchez*, "When reviewing the trial court's dismissal of a petition , this court determines if the facts pleaded and the inferences drawn therefrom state any ground for relief. *Manzer vs. Sanchez,* 29 S.W.3d 380, 383 (Mo.App. ED 2000). We treat all facts alleged a true and construe allegations liberally and favorably to the plaintiff. *Id.* ***(Which the Mo. Ct. of Appeals, DID NOT DO).*** When the trial Court fails to specify it's reason for dismissing the petition, we presume the trial court acted for one of the **reasons stated in the motion to dismiss**. *Id. (There were no motions to dismiss, they were moot, there just was no challenges to the petition).* Dismissal will be affirmed if it can be sustained on any ground supported by the motion, regardless of whether the trial court relied on that ground. *Id. (the Appellate Court, did not read petitioner's first amended complaint, and draw it's inferences, facts, or theories, but instead, recharacterized petitioners case to prejudice them, and dismiss their appeal).* A petition will not be dismissed for failure to state a claim if any set of facts asserted which, if proved, would entitle the plaintiff to relief. *Id. (Again, the Mo. Court of Appeals allowed the fraud, default, and crimes of the respondents to go unchecked, but rather, mischaracterized petitioner's case, to dismiss it, and prejudiced petitioners and advocated for the state actors, herein). Highlighted contents, added.* See, F.A.C., Appendix #13.

If this, Mo. Court of Appeals, used this criteria, without, changing the landscape of petitioner's claims, the Mo. Ct. of Appeals could, in NO WAY, dismiss pet-

itioner's case, by it's own arguments, herein. But in order to prejudice petitioners, the Mo. Court of Appeals had to change a few things in petitioner's pleadings to accomplish it's mission. See, Appendices, #7, #11-#26.

Also, the Mo. Ct. of Appeals used, in it's Discussion, that *Wright vs. Dept. of Corrections*, 48 S.W. 3d 662, 666 (Mo.App. W.D. 2001); See Exhibit #5, *Motion for Rehearing*, pages, #2-#22, wherein that court twisted, reframed, used diametrically opposed theories, recharacterized petitioners claims, and used [4]courtesy, to prejudice, petitioners, and dismissed petitioners winning status, to help the state actors, involved, herein. See, Appendix, #11.

The Exhibits included, herein, show a complete picture of the abuse petitioners have suffered in the lower courts, because they are pro se, and petitioners need this Court to settle these issues, that are contrary to this Court's precedence, outlined herein..

These facts, and cases, herein, were openly used by petitioners in an effort to get the courts be-

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[4] This type of courtesy is clearly forbidden and outlawed, by the cases cited herein. In clear, absolute, conflict to the U.S.Constitution, and this Honorable Court. *Sher, supra, Haines, supra*; And with respect to petition for Declaratory Juddgment, Appendix # 18, the court erroneously ruled that petitioners cannot bring a constitutionally protected claim against private state action, Appendix #3, p.p. 9-10, citing further, that the 14 th Amendment is only such action as may fairly be said to be that of a states. Appendix #3,p. p. 9-10. This is absolutely and erroneously wrong because state actors who use state agencies are acting under color of law regardless of pro se status. Dennis vs. Sparks, 101 S.Ct. 18 (1980); Wyatt vs. Cole, 112 S.Ct. 182(1992); Smith vs. Bacon, 699 F.2d 434 (CA8). The Mo. Ct. of Appeal's erroneous and bogus, statement made, " the dichotomy set forth on the 14th Amendment between deprivation by the state...and private conduct... against which the 14th Amendment offers no shield, goes back as far as the civil rights cases."

low, to set the record straight, and correct, to cease bending the rules for the incompetent attorneys. Without exception, there was NO legal opposition to petitioners amended complaint, as it was unopposed. (Appendix #3, p.p. #9-#10). Petitioners advanced and preserved their theories, claims, and law of the case. " won on the merits, when no timely, response from opposing party."See: *State v. Teer,* 29 Mo. Lexis 12 Mo. Enbanc 1/29/09; Legislature enacts procedural manor, that; the statutes MUST be followed. Not made for discretion, but must be followed. NO TIMELY PLEADINGS---DEFAULT. And, *Moore Enters, Inc., vs. Franklin Newspapers, Inc.*, 716 S.W.2d 907, 908 (Mo.App.1986); "...won on the merits, when no response." See, appellant's briefs, App. #19,#20,#26.

THE VENTIMIGLIA FAMILY STATES:
" The Court of Appeals, ED, created double standards because, had it been appellants who failed to file a timely reply from the amended Petition, the court of Appeals would have held appellants in default." (Appendix #4,p.p. #9-#10). See; *Moore Enters vs. Franklin Newspapers, supra.*

When the Ct. of Appeals said that; (a), " petitioners never notified respondents, when petitioners filed 1st amended complaint, and it was granted, and filed; (b), and when the court of appeals, ED, created an unfounded excuse for the circuit court, that did not, and does not exist. Wherein the Mo. Ct. of Appeals, ED, claimed that judge Kintz, sua sponte dismissed petitioner's amended petition, it, the Ct. of Appeals, was on a mission to help the attorneys and the judges, conspiring to deny, pro se, petitioner's due process and equal protection of the law. It seems that it was a deliberate sabotage, to help the state actors,

and fellow legal colleagues. It could be nothing else. This Court must settle this issue.

Respondents continued to stonewall the petitioners during the appeal with frivolous filings. (Appendices #5-#10). All of these motions were ruled moot by the court of appeals.(Appendix #3,p. #12, note 3)

Lastly, the Court of Appeals, ED, specifically ruled, " pro se litigants must be expected to proceed as an attorney and are not entitled to pro se status Consideration." (Appendix #3,p. #11). Citing, [5]*Garrison, supra*, " *We recognize that Appellant is appealing as a pro se litigant, however, pro se litigants are still bound by the same rules of procedure as attorneys.* [6]*'While this court recognizes the problems faced by pro se litigants, we cannot relax our standards for non lawyers.' This refusal to relax the standards for an appeal for pro se litigants is not due to a lack of sympathy, but rather 'it is necessitated by the requirements of judicial impartiality, judicial*

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[5] Petitioners, unlike *Garrison, supra*, did follow rules and was correct in it's claims, pleadings, and averments, but the Court of Appeals is trying to use *Garrison, supra*, to *undermine this Court's precedence of Haines, supra, Scher, supra, Williams, supra, and Denton, supra, Moore Enters, supra.. Garrison, supra,* cannot be com-pared to this case. Petitioner's claims, averments, and facts, with proper legal, arguments, and cases, and laws, in support, are right on target, and correct, and easily understood. (Appendix #13, #19, #20, #26).

[6] *This is in complete conflict with Haines supra., and other cases cited, herein, and petitioners need this Court to explain the difference, between the issues of the seemingly conflicting implications, as to the intentions of the language used, as it applies to each issue, and each question, that breaks down the different applications of the two cases and fair, jurisprudential effects that apply to this underlying case, herein.*

economy and fairness to all parties.'

The Ct. of Appeals, ED,Mo., in *Garrison*, cited and misapplied a standard, by misstating this case as a valid argument, and only used the first portion of that ruling to misrepresent petitioner's case.

These statements, and actions, as demonstrated in the court's behavior, clearly shown in the opinion, Appendix #3, that the court was not bound to read petitioner's complaint from all for corners. Violating this Court's precedence, and clearly showing prejudice to petitioners, and in so doing, the Ct. of Appeals took the false facts from respondent's attorneys, and ruled from their pleadings, skipping over petitioner's original, bona fide, set of facts, crippling petitioner's offense, and their petition, and their facts were, literally, *thrown out the window.* See; *Scher vs. Gilpin,* 738 S.W.3d 900, 901 Mo.App.W.D.).

II. The Circuit Court of St. Louis, County, Missouri Court of Appeals, Eastern District, and the Missouri Supreme Court did, ignore the open acts of extortion, fraud, oppression in office, misprison of felonies, threats, and intimidation, as well as open and notorious violations of well established rules, regulations, policies, statutes, and Constitutional rights of the petitioners, when these courts, denied the Ventimiglia family due process of the law in violation of the 1st, 5th, and 14th Amendments to the United States Constitution. (Appendices, #2, #5, #6, #8, #9, #10 #11, #12- #26).

Petitioners restate what has been said in, I., above, and III., and IV., below, and incorporates the same herein. There is no question that the respondents secured the aid of multiple biased, and prejudiced judges, below, and this was something petitioners

took issue with, from the beginning. (Appendices #3-#18). There is no question, that the Missouri Court of Appeals, ED, simply, went out of it's way to misstate petitioner's facts and law to keep petitioners from receiving procedural due process, and equal protection of the law. *McIntosh vs. Haynes*,545 S.W.2d 647,653,Mo.

The Mo. Ct. of Appeals should have, in the very least, in it's opinion, ordered the Circuit Court, Judge Kintz, to amend his judgment to give facts, findings, and conclusions of laws, to untangle the confusion set by his naked order, and judgment, of dismissal, written by the attorneys, so that this Court precedence, from *Scher, supra, Haines, supra, and Moore Enters, Inc., supra*, is satisfied; App. #14, #15, #16, #17,

As matter of fact, the respondent's attorneys knew that the wrong conclusions made by the Mo. Ct. of Appeals, wherein that [7]Court of Appeals, stated, in their opinion that, "respondents were not noticed of the first amended complaint," and that, the judge never sua sponte'd the case, were not true, and went along with it. This is a fraud upon the courts and shows collusion between the Ct. of Appeals and the attorneys. This has been going on for three years with petitioners fighting the prejudiced judicial system in

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[7] The Mo. Ct. of Appeals, in summarily dismissing, recharacterizing the review standards requested, and correctly presented was completely misstated, and misquoted, in an attempt to deny petitioner's due process and equal protection of the laws. And by the Mo. Ct. of Appeals actions, it is clear, that the Ct. used the respondents false facts, to summarily deny petitioner's appeal, and did not red the petitioner's facts theories, claims, inferences, and apply them liberally, and admitting them true, but quite the opposite of this Court's precedence; *Scher vs. Gilpin*, 738 S.W.2d 900, 901 (Mo.App. W.D.Mo.). By the Ct's actions, it is clear to see it was targeting the Ventimiglia family, pro se.

St. Louis County, and the other state actors involved, herein, in violation of M.S.Ct. Rules of ethics, RULE 4-3.1, RULE 4-3.3(a), RULE 4-3.4, RULE 55.33(a).

The Court of Appeals made sure it said, loud and clear, " *pro se status, entitles a pro se litigant, to no pro se consideration.*" (Appendix #3, p.#11). But, on the other hand, when the attorneys violate every rule in the book, and is not sanctioned by the court, it makes it very clear that it is team work between the state actors, in front of the bench, and behind the bench. (Appendix #4-#26).

In truth, it is hard enough for a pro se litigant to compete with the experts in the law and the court system, including, " *mock trial*" tactics, and pro se litigants *are entitled to*, a more lax, review, but pro se have to abide within the rules, as well, as petitioners have done. Petitioners were denied, every inference, to their facts, when the court refused their facts and created their own facts to deny petitioner's relief. See; Mo. Ct. of Appeal's Opinion, Appendix #3, and Appendices, #4,#5,#13-#15-#17, petitioner's pleadings.

In addition, [8]Missouri Supreme Court Rules, 55.33(a), et seq. R.S.MO. 509.260, 509.490, 509.500 were specifically violated by the appellate court opinion, (Appendix #3), where the court failed to consider as true unrefuted parts of the record. (legal file 72-75, 78-90, 135-158, 164-166, 173-180, 186-189,

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[8] The M. Ct. of Appeals rejection of the Malicious Prosecution claim (Appendix #3,p.p.7-8), is completely wrong. The fact that the prosecution was dismissed is more than sufficient to sustain the legal claim by the Ventimiglia family. *Cohen vs. Lupo*, 927 F.2d 363 (CA8). (Disposition of bad faith in case did not bar suit for malicious prosecution)(year of vexatious prosecution)(notwithstanding, $100,000.00 for sanctions).

190-193, 196-198). With all of these facts, being ignored, misstatements of the courts, and attorneys, along with, the outright fraud of the state actors, herein, this Court should grant certiorari.

III. The Circuit Court of St. Louis County, Missouri Court of Appeals, Eastern District, and the Missouri Supreme Court ignored the fact, that respondents were allowed to take advantage of the pro se status of the family, where heightened standards of pleading were allowed and where clearly established statutes, rules were allowed to be violated. See; *Writ for Certiorari,* **#09-236,** pending.

Respondent's counsel, was allowed to play *fast and loose, and, hot and cold,* between the state, and federal proceedings, someone has to help the Ventimiglia family, and the Ventimiglia family is relying on this Court to settle these issues. Thereby, respondents actions denied petitioners of their due process, and equal protection of the law, in violation of the 1st, 5th, and 14th Amendments to the United States Constitution. See; Appendices #14, #15, Motion according to Rule 74.06, Fraud upon the court, and Contempt Order. Petitioners do incorporate, and restate the entirety, of I,, II., and, IV., herein, into this section, III.

Counsel for respondents were allowed to file malicious and fabricated pleadings, and to take false, and misleading directions, to the appellants, in this case. (Appendices #4-#26)

In petitioner's pleadings to the Missouri Supreme Court , and the Mo. Ct. of Appeals, ED, page, after page, cited the Missouri Courts to wrong doing, fraud on the court, and obstruction of justice. (Appendix #5, p.p. 1-19).Petitioners abandoned nothing throughout the court proceedings, from court to court.

See; *Motion for Transfer;*

" 6. The entire opinion written by this court altered and changed the landscape of this action and this appeal, and in fact, issued an order that the opinion would not be published so that other litigants will not be aware of the fraud committed against appellants by the attorneys, and the courts allowing it t go on unabated by the unreported opinion issued in this case. The not reporting of the opinion, was, and is, nothing but a sham to obstruct appellant's rights to meaningful access to the federal courts. Appellants have viable issues at stake before this court." *Id.* (Appendix #5, p. #9).

IV. The Missouri Court of Appeals specific findings that pro se litigants stand in the same shoes as an attorney and is to be judged as such in his/her pleadings and defenses, and judged the petitioner's pleadings using those standards. This conclusively, by the Court's own words, and actions, violated petitioner's rights to due process, equal protection of the law, and meaningful access to the courts in violation of the 1st, 5th, and 14th Amendments to the United States Constitution. "If these were merely procedural defects or any one of these procedural defects stood alone, we might be hesitant to dismiss this appeal." *Garrison, supra.* Petitioners claim, they may have had some procedural defects, only, and the court was erroneous and held petitioners to heightened standards, and petitioners ask this Court to review the petition properly, and send this case back with proper instructions to the courts. Appendix #13, First Amended Petition; Also; in *Garrison Supra*, [22], " This Court is not authorized to advocate for Mother on appeal by effectively rewriting her brief, and we have no choice but to

dismiss her appeal." *Garrison*, 115 S.W.3d at 387; *Pulen v. Pullen*, 75 S.W.3d 838, 840 (Mo. App. S.D). The Mo. Ct. of Appeals did, in fact, recharacterize petitioner's brief and facts, and advocated for the respondents, state actors, **just to dismiss petitioner's appeal**, and help the state actors, herein, in conflict with these court's above, herein this paragraph. Petitioners do restate and incorporate, I., II., and III., into this section IV.,

One of the most shocking portions of the Missouri Court of Appeals, opinion, is that, " pro se litigation will be held to the same standards as attorneys is unconstitutional.(Appendix #3.p. #11). This standard of review as used against petitioners multiple times in this case, even in the court's opinion. And whenever necessary, *the Mo. Ct. of Appeals would create it's own facts for appellants,* in order to misrepresent the truth of the petitioner's claims; Now, [9]this standard is totally inconsistent with U.S. Supreme Court precedence. See; *Haines vs. Kerner*, 92 S.Ct. 594

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[9] The Ventimiglia family was denied the process the law demands, and that is: (1) all direct factual conflicts must be resolved in favor of the petitioners; (2) ALL THE FACTS in support of the petitioners that the evidence tended to prove, must be assumed, and, (3) The petitioners must be given the Benefit of all reasonable inferences. Hopson vs. Frederickson, 961 F.2d 1374, 1379 (CA8). Using this standard, there is no way the opinion of the Missouri Court of Appeals must be could be sustained. (Appendix #3). Whether a federal court of appeals or state court violated due process, meaningful access to the courts, the court need only examine the affect this disruption can have. See; e.g. Dist. Attorney's Office for 3rd Dist. Vs. Osborn, 2009 U.S. Lexis 4536 (2009). States are not free to violate the Constitutional rights of it's citizens. Melendez-Diaz Vs. Moss, 129 S.Ct. 2527 (2009).

(1972); *Nietzke vs. Williams*, 109 S.Ct. 1827 (2007); *Erickson vs. Pardus*, 127 S.Ct. 2187 (2007); *Smith vs. Bacon*, 699 F.2d 434(CA8); *Scher vs. Gilpin*, 738 S.W. 2d 900, 901 (W.D.MO.). See: Appendices, #4-#18

Clearly, the Missouri Court of Appeals, ED, unconstitutional standards towards pro se status, is reflected in the, mind twisting, opinion issued in this case? Obviously, that is not the law. *Haines vs. Kerner, supra.* (appendix #3, p.#11), Also see; *Denton vs. Hernandez,* 112 S.Ct. 1728; *Ashcroft vs. Iqbal,* 2009 U.S. LEXIS 3472 (2009), *Christopher vs. Harbury,* 122 S.Ct. 2179 (2002). See the Opinion Appendix #3, wherein the Ct. of Appeals, in it's standard of Review, stated, on page #4, and #5; " when the trial Court fails to specify it's reason for dismissing the petition, **we presume the trial court acted for one of the reasons stated in the motion to dismiss**."

Here the Court is caught in it's own words. **How can this Mo. Court of Appeals, use Mooted Motions to Dismiss as a base to decide the lower courts ruling, when technically, there were no motions to dismiss, they were nullified?** The Ct. of Appeals already agreed that the motions to dismiss were mooted. Page #5 of the opinion, " *In the instant case, the motions to dismiss Appellant's original petition were indeed moot when the appellants properly filed their first amended petition.*" See, App. #14,#17 .

The Court of Appeals, E.D.Mo., [10]again changed the landscape of petitioner's appeal to prejudice them and dismiss their case to help the state actors, by not

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[10] When case law is misstated in lower courts and agencies, those actions cannot stand. *Negusie vs. Holder,* 2009 U.S.Lexis 1768 (2009); *Harbison vs. Bell,* 2009, U.S.Lexis, 2496 (2009). *Costa vs. Allen,* 2008, Mo.App., Lexis 8, and 276, the court crossed the line.

reviewing petitioner's appeal under the review requested by petitioners, but instead, heaped outrageous, criteria upon them, see, Appendix #3, and #13, petitioners were in the Appellate Court for Abuse of Discretion, and Plain Error, only, but the Appellate Court in Mo.,E.D., changed appellant's theories, facts, and review, to prejudice petitioners and dismiss their case, unfairly, and illegally, violating petitioner's 1st, 5th, and 14th Amendments to the U.S. Constitution. See: Appendices, #4-#26.

By the Ct. of Appeals, ED, Mo., own wording, even though, it is [11]incorrect, states, also, on page #5, "*In the instant case, trial judge independently reviewed the first amended petition and dismissed it sua sponte for failure to state a claim.*" Also, in the *Wright,* case, there was a jurisdictional deficiency, justifying sua sponte; Plus, [12] *Wright* was a prisoner, and petitioners are not, and petitioner's did have proper jurisdiction, and are not subject to the prisoner litigation reform act; and lastly, the court could not sua sponte petitioner's case, with no facts, findings, or conclusions of laws, because there were appearances made by opposing parties, responsive pleadings filed, and the most important issue is; **respondents were in default before they hit the court room on June 11, 2008, before the case was dismissed., erroneously.**

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[11] Reasonable doubt, Appen. #3. p.11. *Cruz vs. Beto*, 92 S.Ct. 1079(1972).

[12] In *Wright*, the case was reversed, because of the criteria of the Declaratory Judgment request, and the wrong way the case was dismissed, which is exactly like petitioner's case, " the court could not dismiss for failing to state a claim upon which relief could be granted." " That is a dismissal on the merits. There were no merits, or issues, decided in this case herein. Petitioner's case is identical to *Wright*, and should have been sent back by the Mo. Ct. of Appeals to the circuit with instructions, similar to *Wright*. See: Appendix #18. .

May 9th to June 11th, is 33 days, and respondents were in legal default. No getting around it.

And needless to say, petitioners need this Court to settle these issues that are so conflicting with this Court, and all other courts, precedence in these matters. Petitioners have been exposed to a horrible nightmare, and need this court to deliver them from it, *please*, and make the wrong, right, as this Honorable Court sees fit to do.

CONCLUSION

Wherefore, petitioners pray that this court grant this writ of certiorari, in whole, or in part, and for relief, as law and equity allows, for the public interests, and other pro se litigants.

Respectfully submitted,

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N.V., and J.V. minors, by
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CERTIFICATE OF SERVICE, & CERTIFICATE OF COMPLIANCE

I, VINCENT VENTIMIGLIA, do declare that on this date of September 25th, 2009, as required by Rule 29, that I have served a copy of the enclosed petition for Certiorari on each party to the above Proceeding, to the parties counsel, and to every other person required to be served by depositing an envelope containing the above documents into the U.S. Mail, properly addressed to each of them, with first class U.S. Postage, prepaid, to the names and addresses below, as follows;

Russell Watters,
Jennine Adamek Moore,
Kenneth Goleaner,
1010 Market St.
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Daniel Tobben
Kevin Berhnt
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Clayton, MO. 63105.

Vincent Ventimiglia
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Imperial, MO. 63052

As required by Supreme Court Rule 33.1(h), I certify that the petition for a Writ of Certiorari contains *8322* words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I do declare under penalty of perjury that the forgoing is true and correct, in accordance to 28 U.S.C. § 1746.

Vincent Ventimiglia